

**Senate Bill No. 1121**

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Passed the Senate      September 10, 1997

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*Secretary of the Senate*

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Passed the Assembly      September 3, 1997

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_ day  
of \_\_\_\_\_, 1997, at \_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_

An act to amend Sections 8502 and 8801.5 of the Family Code, relating to family law.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1121, Craven. Adoption.

Under existing law, an adoption service provider, as defined, has specified duties relating to independent adoptions, including the duty to advise each birth parent of his or her rights to counseling, among other things.

This bill would authorize a licensed marriage, family, and child counselor with a minimum of 5 years' experience providing professional adoption casework services while employed by a licensed California adoption agency or the department, to be an adoption service provider. The department would be required to review the qualifications of each individual to determine his or her professional adoption casework experience. The bill would also require that the birth parent be advised of his or her choices regarding counselors, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. Section 8502 of the Family Code is amended to read:

8502. (a) "Adoption service provider" means any of the following:

(1) A licensed private adoption agency.

(2) An individual who has presented satisfactory evidence to the department that he or she is a licensed clinical social worker who also has a minimum of five years of experience providing professional social work services while employed by a licensed California adoption agency or the department.

(3) In a state other than California, an adoption agency licensed or otherwise approved under the laws of that state, or an individual who is licensed or otherwise



certified as a clinical social worker under the laws of that state.

(4) An individual who has presented satisfactory evidence to the department that he or she is a licensed marriage, family, and child counselor who has a minimum of five years of experience providing professional adoption casework services while employed by a licensed California adoption agency or the department. The department shall review the qualifications of each individual to determine if he or she has performed professional adoption casework services for five years as required by this section while employed by a licensed California adoption agency or the department.

(b) If, in the case of a birth parent located in California, at least three adoption service providers are not reasonably available, or, in the case of a birth parent located outside of California who has contacted at least three potential adoption service providers and been unsuccessful in obtaining the services of an adoption service provider who is reasonably available and willing to provide services, independent legal counsel for the birth parent may serve as an adoption service provider pursuant to subdivision (e) of Section 8801.5. “Reasonably available” means that an adoption service provider is all of the following:

(1) Available within five days for an advisement of rights pursuant to Section 8801.5, or within 24 hours for the signing of the placement agreement pursuant to paragraph (3) of subdivision (b) of Section 8801.3.

(2) Within 100 miles of the birth mother.

(3) Available for a cost not exceeding five hundred dollars (\$500) to make an advisement of rights and to witness the signing of the placement agreement.

(c) Where an attorney acts as an adoption service provider, the fee to make an advisement of rights and to witness the signing of the placement agreement shall not exceed five hundred dollars (\$500).

SEC. 2. Section 8801.5 of the Family Code is amended to read:

8801.5. (a) Each birth parent placing a child for adoption shall be advised of his or her rights by an adoption service provider.

(b) The birth parent shall be advised of his or her rights in a face-to-face meeting in which the birth parent may ask questions and have questions answered, as provided by Section 8801.3.

(c) The department shall prescribe the format and process for advising birth parents of their rights, the content of which shall include, but not be limited to, the following:

(1) The alternatives to adoption.

(2) The alternative types of adoption, including a description of the full procedures and timeframes involved in each type.

(3) The full rights and responsibilities of the birth parent with respect to adoption, including the need to keep the department informed of his or her current address in case of a medical emergency requiring contact and of providing a full health history.

(4) The right to separate legal counsel paid for by the prospective adoptive parents upon the request of the birth parent, as provided for by Section 8800.

(5) The right to a minimum of three separate counseling sessions, each to be held on different days, to be paid for by the prospective adoptive parents upon the request of the birth parents, as provided for by subdivision (d).

(d) Each person advised pursuant to this section shall be offered at least three separate counseling sessions, to be held on different days. Each counseling session shall be not less than 50 minutes in duration. The counseling may be provided by the adoption service provider who informs the birth parent of his or her rights, or by another adoption service provider, or by a licensed psychotherapist, as defined by Section 1010 of the Evidence Code, as elected by the person, and after having been informed of these choices.

(e) The counselor owes a duty of care to the birth parent being counseled, similar to the duty of care



established by a psychotherapist-patient relationship, regardless of who pays the fees of the counselor. No counselor shall have a contractual relationship with the adoptive parents, an attorney for the adoptive parents, or any other individual or an organization performing any type of services for the adoptive parents and for which the adoptive parents are paying a fee, except as relates to payment of the birth parents' fee.

(f) The advisement and counseling fees shall be paid by the prospective adoptive parents at the request of the birth parent.

(g) Failure to fulfill the duties specified in this section shall not be construed as a basis for setting aside the consent or the adoption, but may give rise to a cause of action for malpractice or negligence against those professionals or agencies serving as adoption service providers that are responsible for fulfilling the duties.

Approved \_\_\_\_\_, 1997

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*Governor*

